

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 6

2022

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Shifting from the Patriarchal Legal Model to a Cultural Feminism Model: Combating the Double Burden on Women

SIMANTININI BARAOKAR¹

ABSTRACT

The whole notion of the Superwoman came from the second-wave feminist movement which brought in sexuality, family, work, and reproductive rights. This gave women opportunities they never had before. It opened doors that had been shut to them for years. For some women, this whole new world included more options than they knew what to do with, the pressure to do it all while matching up to male standards and the belief that they could. The Superwomen Syndrome is the result of societal changes that allowed women to explore having a career, however did not redelegate the responsibilities of managing their personal and family life. Beyond that, women have had to excel at levels higher than men to get the same recognition at the workplace, which has caused us to aspire to a level of perfectionism that is not attainable. This has caused women to be suppressed under a double burden. Cultural feminists note that many institutions, such as workplace, follow rules based heavily on male-dominated experiences, which can disadvantage women. Gender-neutral laws can keep women down if they do not acknowledge women's different experiences and perspectives. Cultural feminists urge the concept of legal equality in which laws accommodate the biological and cultural differences between men and women. They advocate a female-centric standard of law. This article explores how the current scenario where choices of young adults and working women are influenced due to the anticipation of the double burden and whether the application of the cultural feminist model will help them overcome this Superwoman Syndrome and lower this burden on women.. It will also go on to talk about how this theory may have been applied in India and what improvements can be brought about in its implementation. In its essence, the article uses feminist legal theories to establish the root cause of the double burden and try and come up with a solution to deal with it. It further tries to understand the concept of a superwoman and workplace laws through the lens of a cultural feminist.

¹ Author has Pursued B.A.LL.B. from ILS Law College, Pune, India.

I. INTRODUCTION

“**Patriarchy** means the rule or “power of the fathers”. It is a system of social and political practices in which men subordinate and exploit women. The subordination occurs through complex patterns of force, societal **pressures**, and traditions, rituals, and customs. This domination does not just occur in individual relationships, but it supported by the major institutions in society. In the employment sphere, a gendered division of labour occurs whereby women are segregated into low-status jobs at lower wages. Patriarchy is created and reinforced by a system of beliefs that says men should be superior in education, employment, politics and religion. It is a political structure that values men more than women. Women are relegated to the status of second class citizens. **Catherine MacKinnon** describes the ways men are dominant and privileged: *‘Men’s physiology defines most sports, their needs define auto and health insurance coverage, their socially designed biographies define workplace expectations and successful career patterns, their perspectives and concerns define equality in scholarship, their experiences and obsessions define merit, their objectification of life defines art, their military service defines citizenship, their presence defines family, their inability to get along with each other - their wars and rulership – defines history, their image defines god, and their genitals define sex’*. Patriarchy includes sexual domination by men and sexual submission by women. Women are forced into stereotypic moulds that demand that they present themselves as feminine and differential and that they assume a disproportionate share of responsibility for house-work, childcare, and eldercare. Patriarchy gives men control of women’s sexuality, their reproductive freedom, and their lives. When women live in a patriarchal society, they may internalise the beliefs of the dominant group. They may seek out, choose, and even enjoy dependent or submissive relationships or caretaking roles. “women value care”, according to MacKinnon, “because men have valued us according to the care we give them... Women think in relational terms because our existence is defined in relation to women.” This psychological aspect of oppression is called “false consciousness”².

Especially in India, with strong social condition and this deep rooted patriarchy comes a great burden for the modern woman. “Women may have expanded their reach in terms of the roles they adopt but have not compensated for the traditional ones that have long been associated with the female gender. In fact, the freedom of choice has only added to the towering set of expectations placed upon women, demanding them to be the best at everything. The modern woman should fulfil her duties to herself, her home and her career with perfection and never

²N. Levit, R.R.M. Verchick, *Feminist Legal Theory: A primer*, 21, (2nd ed., 2016).

lose her balance. A world-renowned surgeon should be agile enough to cook a great meal for her family after performing a day-long standing surgery. The female CEO must maintain her appearance to give a lasting impression of the firm she represents. But how does one be the ideal homemaker and working woman concurrently? This is not to insinuate that a woman can only build either a sound domestic or professional life at the expense of the other. But must it be necessary to expect her to fulfil every role perfectly and reprimand her if she falls short? When a woman faces a professional setback or deliberately chooses a slower career path to balance her life, the verdict that she is inept or too feeble for the corporate world is quick to follow. At the same time, housewives are shunned as being frivolously idle. **A double standard exists** wherein a woman who chooses not to work is labelled ‘just a housewife’ while a more career-oriented one is supposedly neglecting her husband and children”³.

II. THE SUPERWOMAN SYNDROME & THE DOUBLE BURDEN

“The term, **superwoman**, was coined by author, Marjorie Hansen Shaevitz who wrote the book, *The Superwoman Syndrome*, published in 1984. The basis of the book was "for women trying to do it all - how to decide what's important in your life and do it well. “The whole notion of the Superwoman came from the second-wave feminist movement which was part of the Feminist Movement that began in the 60s and lasted until the late 70s. The first-wave of this Movement was to gain legal rights and the second-wave involved sexuality, family, work, and reproductive rights. The second-wave of the Feminist Movement gave women opportunities they never had before. It opened doors that had been shut to them for years. **For some women, this whole new world included more demands than they knew what to do with, the pressure to do it all and the belief that they could**”⁴.

“This syndrome is created by something called a double burden on women. **Double burden** is a term used to describe the workload of people who work to earn money, but who are also responsible for significant amounts of unpaid domestic labour. In heterosexual couples where both partners have paid jobs, women often spend significantly more time than men on household chores and caring work, such as child-rearing or caring for sick family members. This outcome is determined in large part by traditional gender roles that have been accepted by society over time. Labour market constraints also play a role in determining who does the bulk of unpaid work. The idea of the double burden is more evolved with the times concerning both sexes and their newfound roles. The role of a provider and caregiver is sometimes expected of women,

³Mehreen Ovais, *The super woman syndrome: A new age dilemma*, The Express Tribune (31/03/2014), available at <https://tribune.com.pk/story/688029/the-super-woman-syndrome-a-new-age-dilemma/>

⁴ *Superwoman Syndrome*, We Have Kids, available at <https://wehavekids.com/parenting/Superwoman-Syndrome>

but as more women enter the workforce, an ‘independent’ ideology seems to take effect and forces some women to decide between a career and family. Some may choose strictly one or the other, others may choose to carry the burden of both lifestyles. The constant tug of war regarding one’s time and where it could, should but will be spent creates a new speed bump that is a little bit higher than the previous ones. Modern times illuminate the dilemma that many dual-income couples face when trying to reconcile unpaid domestic work and paid employment. The burden of encompassing both ideologies plays a toll on both sexes in today’s societies”⁵.

III. THE CURRENT SCENARIO

“Increasingly, both **male and female college students** need to consider their future work and family lives. While many older women faced resistance in pursuing education and career, more recent college-aged women increasingly face pressure from others to go to college and pursue a career. However, the increasing focus on work does not seem to have diminished a strong focus on families as well. Although the percentage of people who are married at a given point in time has declined, an overwhelming majority of people gets married at some time in their lives. Today's college students are likely to have grown up in households where both parents work outside the home but the mother does more work inside the home. Therefore, it is likely that young men and women expect that both they and a future spouse will work outside the home. At the same time, expectations for family work are likely to still fall disproportionately on women”⁶. Researchers have consistently found that even though **female students have expressed a high value for both career and family roles, they are usually expected to compromise their careers to accommodate family responsibilities**⁷.

Hence we can see that, at this stage in society, due to the internalisation of patriarchal structures, it is believed that women are inferior to men. In Feminist Legal theories, the equality theories fail to address the pre-dominant patriarchy and patriarchal structures of power that perpetuate it. The legal system should help elevate the current position of women which has been diminished through the centuries by patriarchy which MacKinnon talks about. It should help women deal with this superwomen syndrome. This can be done using the cultural feminism model.

⁵ *Cultural Anthropology – Double Burden*, Lumen, available at <https://courses.lumenlearning.com/culturalanthropology/chapter/double-burden/>

⁶ Gayle Kaufman, *Gender role attitudes and college students’ work and family expectations*, 22 *Gender Issues* 58 (2005), available at <https://link.springer.com/article/10.1007/s12147-005-0015-1>

⁷ F. Heather Davey, *Young Women’s Expected and Preferred Patterns of Employment and Child Care*, 38 *Sex Roles* 95 (1998), available at <https://link.springer.com/article/10.1023/A:1018716612764>.

IV. CULTURAL FEMINIST MODEL AS A SOLUTION

“**Cultural Feminism** (also called “difference Theory” or, sometimes pejoratively, “special treatment theory”) argues that formal equality does not always result in substantive equality. Cultural Feminists criticized the sameness model as male-biased, serving women only to the extent that they could prove they were like men. Purely formal equality of opportunity did not lead to equality of results. People judged women harshly on the basis of their inability to conform to male norm. Gender-neutral laws can keep women down if they do not acknowledge women’s different experiences and perspectives. This theory emphasizes the differences between men and women, whether the differences in question are biological differences related to childbearing or cultural differences reflected in social relationships. Cultural feminists note that many institutions, such as the workplace, follow rules based heavily on male-dominated experiences, which can disadvantage women. For instance, the voluntary-quit rules of unemployment compensation typically disqualify from receiving benefits people (predominantly women) who leave their jobs because of work family conflicts. Damages in most tort cases are based on anticipated loss of future earning capacity, so female plaintiffs often receive damage rewards discounted by anticipated work absences during childbearing years. Cultural feminists urge that men and women should not be treated the same where they are relevantly different and that women should not be required to assimilate to male norms. They urge instead a concept of legal equality in which laws accommodate the biological and cultural differences between men and women. Advocates of Special Treatment urged a model that focuses on differences between the sexes, whether rooted in culture or biology”⁸.

In India, owing to family responsibility along with cultural restrictions, the participation of women in the formal economy is limited. Some other concerns that are affecting working women relate to **gender discrimination, quantum of payment, safety at work place, working hours and conditions of employment that are sensitive to cultural and religious bondages as well as family responsibilities**. The main focus of the Indian legislature is on reducing inequality of any sort, and thereby promoting a fair, non-discriminatory and safe work environment⁹. As rightly mentioned by our honourable Prime Minister Mr. Narendra Modi in one of his speeches, **women constitute 50% of our population** and if they do not come out and work, then our country will never grow at the pace we all envision it to grow, and for that very reason, governments over time have taken special care to enact and amend laws to ensure

⁸ N. Levit, R.R.M. Verchick, *Feminist Legal Theory: A primer*, 15, (2nd ed., 2016).

⁹ *Women Legislations*, Paycheck.in, available at <https://paycheck.in/career-tips/women-paycheck/women-legislation>, last seen on 29/03/2019.

greater participation of women in the growth story of India¹⁰. These labour laws seem to have the cultural feminist model in place. We can see some of the laws and their important provisions as follows:

1. The Maternity Benefit (Amendment) Act, 2017

- Maternity leave raised from 12 to 26 weeks¹¹.
- A leave period of 12 weeks granted to an adoptive mother or mother having a child through surrogacy¹².
- Presented the choice of telecommuting/work from home for new moms¹³.
- Crèche facility has been made obligatory under the change for each foundation utilizing at least 50 representatives¹⁴.

2. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013

- A very inclusive definition of Sexual Harassment and workplace hence broadening the scope of the Act¹⁵.
- Provision of internal committee at workplace for easier access to justice for women¹⁶.

3. The Factories Act, 1948

Even though this legislation is applicable to all factory workers, it has exclusive provision for women workers.

- No woman worker shall be required or allowed to work in any factory except between 6 a.m. and 7 p.m.¹⁷
- Women employees are entitled to get at least a 24-hour notice for their shift timing change.

¹⁰ *5 Laws Every Working Woman Should Know About*, SHEROES, available at <https://sheroes.com/articles/5-laws-every-working-woman-should-know-about/MTIINA==>

¹¹ S. 5(3), The Maternity Benefit (Amendment) Act, 2017.

¹² S. 5(4), The Maternity Benefit (Amendment) Act, 2017

¹³ S. 5(5), The Maternity Benefit (Amendment) Act, 2017

¹⁴ S. 11A (1), The Maternity Benefit (Amendment) Act, 2017

¹⁵ S. 2(n), S. 2(o), S. 3(2), The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

¹⁶ S. 4, The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

¹⁷ S. 66(1)(b), The Factories Act, 1948.

- The Factories Act also stipulates the employers employing 30 or more women workers to provide for cèches for children of the women workers, aged 6 years and below¹⁸.

“State Governments from time to time issue notifications for amending provisions of the Factories Act, which would be applicable to workers in factories in that particular State. For instance, on 1st December, President Pranab Mukherjee gave his assent to the Maharashtra Factories (Amendment) Bill, 2015, wherein, amongst other amendments, it is allowing women to work in factories in night shifts. This amendment also makes it mandatory for factory management to ensure the security of women working night shifts”¹⁹.

4. The Equal Remuneration Act, 1976

There are constant discussions and instances of pay discrimination, where women workers are getting paid lesser than their male peers. This is a story world over. Article 39 of our Constitution directs that States shall particularly have policies towards securing equal pay for equal work for both men and women. Under this act, employers cannot discriminate between men and women while recruiting unless there is a restriction under the law to employ women in certain industries.

5. Shops and Establishments Act (Maharashtra, 1948 and Delhi, 1954)

The State Governments enact their respective shops and establishments act, regulates the working conditions of employees in a shop or commercial establishment. Due to the varying work in certain industries, prior permission from authorities is needed for allowing women to work beyond prescribed limits. Approvals for allowing women to work late nights always comes with special conditions and obligations, on the part of the employer, such as, providing a safe working environment, providing adequate security during the night hours, provide transport to their residence after the late working hours, women employees should be placed in a group while working at nights and not alone, etc²⁰.

V. CONCLUSION

Even with these acts in place, we see that, at just **24%**, according to the Economic Survey 2017-18, **India’s female workforce participation is amongst the lowest in South Asia**²¹. This low percentage of participation despite robust economic growth, rising incomes, falling fertility

¹⁸ S. 48(1), The Factories Act, 1948.

¹⁹ Supra note 9.

²⁰ Supra note 9.

²¹ N. Bhandare, *As Indian women leave jobs, single women keep working. Here’s why.*, Business Standard (23/06/2018), available at https://www.business-standard.com/article/current-affairs/as-indian-women-leave-jobs-single-women-keep-working-here-s-why-118062300375_1.html

rates and improvements in female literacy in disconcerting. This is probably due to the prevailing social norms and patriarchy in India, which suppresses women under the double burden of work and family. A way to combat this issue could be by having **Multi-Stake Holder Interventions That Shape Gender Attitudes** proposed by Surbhi Ghai²². Another solution proposed by Aishwarya Javalekar is **recognising “unpaid domestic work”**. She says that, “equal opportunity for work cannot be just about increasing pay for women, or increasing their participation in the workforce, but about redefining the current patriarchal definition of work. This will un-gender domestic and care work, minimising women’s work and improving their quality of life. For real equality, unpaid domestic work needs to be legitimised and given due recognition. Only then can we expect equal participation in the workforce, and in the household”²³.

In India, it is said that it takes a village to raise a child. But for girls, it is also a matter of silencing voices and swimming against the tide²⁴.

Hence, it can be concluded that the fundamental problem is the social conditioning of society that proves to be a barrier for women in India where the pressure to conform comes from family. The government schemes must target the intrinsic cultural and social forces that shape patriarchy, if we want to see any material improvement and help women²⁵.

²² Surbhi Ghai, *The Anomaly of Women’s Work and Education in India*, ICRIER Working Paper Series, 33, Working Paper 368, India Council for Research on International Economic Relations (2018), available at http://icrier.org/pdf/Working_Paper_368.pdf

²³ *Unpaid Domestic Labour And The Invisibilisation Of Women’s Work*, Feminism India, available at <https://feminisminindia.com/2017/09/04/unpaid-domestic-labour/>.

²⁴ Shoba Narayan, *For Girls in India the Pressure to Conform Comes From Family*, The New York Times (30/08/2013), available at <https://parenting.blogs.nytimes.com/2013/08/30/for-girls-in-india-the-pressure-to-conform-comes-from-family/>,

²⁵ *Why Indian women are leaving the workforce*, Livemint, available at <https://www.livemint.com/Companies/XNydExrEnpUIw5wKdQ0AO/Why-Indian-women-are-leaving-the-workforce.html>,